



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-831]

Fresh Garlic from the People's Republic of China: Partial Final Results and Partial Final Rescission of the 2009-2010 Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: On October 20, 2011, the Department of Commerce (Department) published the partial preliminary results of the administrative review of the antidumping duty order on fresh garlic from the People's Republic of China (PRC) covering the period of review (POR) of November 1, 2009, through October 31, 2010. The Department is issuing these partial final results for the PRC-wide entity only.

Based on the analysis of the record and the comments received, the Department finds that seven companies subject to this review, including mandatory respondents, Shandong Longtai Fruits and Vegetables Co., Ltd. (Longtai) and Weifang Hongqiao International Logistic Co., Ltd. (Hongqiao), did not demonstrate their eligibility for separate rate status and, thus, will be considered part of the PRC-wide entity for purposes of these final results. These companies are listed in Appendix I. The Department is also rescinding the review with respect to 14 exporters who had "no shipments" during the POR. A list of these companies is found in Appendix II.

EFFECTIVE DATE: [Insert date of publication in the Federal Register]

FOR FURTHER INFORMATION CONTACT: Lingjun Wang, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-2316.

SUPPLEMENTARY INFORMATION:

Background

On October 20, 2011, the Department published in the Federal Register the partial preliminary results of the 2009-2010 administrative review of the antidumping duty order on fresh garlic from the PRC. See Fresh Garlic From the People's Republic of China: Partial Preliminary Results, Rescission of, and Intent To Rescind, in Part, the 2009-2010 Administrative Review, 76 FR 65172 (October 20, 2011) (First Partial Preliminary Results).¹ On December 7, 2011, the Department issued its second partial preliminary results.² Since the First Partial Preliminary Results, the following events have occurred.

On November 21, 2011, the Department extended the deadline for submission of case briefs to December 1, 2011 and rebuttal briefs to December 6, 2011. On November 30, 2011, the Fresh Garlic Producers Association (FGPA) and its individual members³ (collectively, Petitioners) submitted a document called "Petitioners' Comments on Certain No Shipment Claims and Department's Partial Preliminary Results" (No Shipment Comments). On December 9, 2011, the Department rejected Petitioners' No Shipment Comments as untimely new factual information. See the Department's December 9, 2011 letter to Petitioners. On December 1, 2011, Petitioners, and Hongqiao, Sunny Import & Export Co. Ltd., and Shenzhen Greening

¹ The Department initiated this review for 113 producers/exporters. Based on timely withdrawal of requests for review, the Department rescinded the review with respect to 84 producers/exporters in the First Partial Preliminary Results. These final results and final rescission cover 21 companies.

² The second partial preliminary results covered the remaining companies subject to the review. See Fresh Garlic From the People's Republic of China: Preliminary Results of the 2009-2010 Antidumping Duty Administrative Review, 76 FR 76375 (December 7, 2011). The final results for these companies are currently due no later than April 5, 2012.

³ The individual members of the FGPA are Christopher Ranch L.L.C., The Garlic Company, Valley Garlic, and Vessey and Company, Inc.

Trading Co., Ltd. (collectively, Respondents) submitted case briefs. On December 6, 2011, Petitioners submitted their rebuttal brief.

Scope of the Order

The products covered by the order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay. The scope of the order does not include the following: (a) garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed. The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0010, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9700 of the Harmonized Tariff Schedule of the United States (HTSUS).

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive. In order to be excluded from the order, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non-fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to U.S. Customs and Border Protection (CBP) to that effect.

Analysis of Comments Received

All issues addressed in the case and rebuttal briefs by parties in this review are discussed in the Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Import Administration, regarding “Issues and Decision Memorandum for Fresh Garlic from the People’s Republic of China: Partial Final Results and Partial Final Rescission of the 2009-2010 Administrative Review,” dated concurrently with this notice (Decision Memorandum), which is hereby adopted by this notice. A list of the issues that parties raised and to which we responded in the Decision Memorandum follows as Appendix III to this notice. The Decision Memorandum is a public document, which is on file electronically via Import Administration’s Antidumping and Countervailing Duty Centralized Electronic Services System (IA ACCESS). Access to IA ACCESS is available in the Central Records Unit (CRU) of the main Commerce Building, Room 7046. In addition, a complete version of the Decision Memorandum is also accessible on the Web at <http://ia.ita.doc.gov/frn>. The signed Decision Memorandum and the electronic versions of the Decision Memorandum are identical in content.

Changes Since the First Partial Preliminary Results

Based on our analysis of the comments received, we have made no changes to the First Partial Preliminary Results.

Final Partial Rescission Based on No Shipments

As discussed in the First Partial Preliminary Results, the 14 companies listed in Appendix II each timely certified that it had no shipments during the POR. After we checked the claims with CBP and examined CBP shipment data, the Department announced its intent to rescind the

administrative review with respect to these companies in the First Partial Preliminary Results. No parties commented on our preliminary intent to rescind. Thus, there is no information or argument on the record of the current review that warrants reconsidering our preliminary decision to rescind. Therefore, we are rescinding this administrative review with respect to all 14 companies listed in Appendix II.

Separate Rates

In proceedings involving non-market economy (NME) countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of subject merchandise in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be eligible for a separate rate.⁴

As discussed in the First Partial Preliminary Results, neither Longtai nor Hongqiao, the two mandatory respondents, responded to the initial questionnaire. Thus, neither of these two companies demonstrated its eligibility for separate rate status and each will be considered part of the PRC-wide entity for purposes of this review. See "Application of Total AFA to the PRC-wide entity" section, below. In addition, in the First Partial Preliminary Results, the Department found five other companies were part of the PRC-wide entity because, although each company was subject to the review, none of these companies submitted separate rate certifications or applications. There is no information on the record of this review that warrants reconsideration of our preliminary decision to consider each of these five companies to be part of the PRC-wide

⁴ See Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China, 56 FR 20588 (May 6, 1991), as further developed in Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China, 59 FR 22585 (May 2, 1994).

entity. Therefore, the Department has found that each of these five companies and the two uncooperative mandatory respondents to be part of the PRC-wide entity for these final results.

See Appendix I.

Use of Facts Otherwise Available and Adverse Facts Available (AFA)

Section 776(a) of the Tariff Act of 1930, as amended (the Act) provides that the Department shall apply “facts otherwise available” if (1) necessary information is not on the record, or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act provides that the Department “shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority” if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these

conditions are met, the statute requires the Department to use the information supplied if it can do so without undue difficulties.

Section 776 (b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Such an adverse inference may include reliance on information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. For the reasons discussed below, the Department determines that, in accordance with sections 776(a)(1), 776(a)(2) and 776(b) of the Act, the use of AFA is appropriate for the final results with respect to the PRC-wide entity, which includes Longtai and Hongqiao.

Application of Total AFA to the PRC-wide entity

Because Longtai and Hongqiao were selected as mandatory respondents, but did not respond to the initial questionnaire, neither company demonstrated its eligibility for separate rate status. Thus, for purposes of these final results, Longtai and Hongqiao are considered part of the PRC-wide entity. Further, because these two companies, which are part of the PRC-wide entity, did not respond to the questionnaire, the Department determines that the PRC-wide entity withheld information requested by the Department in accordance with sections 776(a)(2)(A) and (B) of the Act, and significantly impeded the proceeding in accordance with section 776(a)(2)(C) of the Act.

As a result, the Department is basing the dumping margin of the PRC-wide entity on the facts otherwise available on the record. No other party provided any additional information regarding the PRC-wide entity. In addition, because Longtai and Hongqiao, which are part of

the PRC-wide entity, failed to cooperate to the best of their ability, we find the PRC-wide entity did not provide the requested information, which was in the sole possession of the respondents and could not be obtained otherwise.⁵ Hence, pursuant to section 776(b) of the Act, the Department has determined that, when selecting from among the facts otherwise available, an adverse inference is warranted with respect to the PRC-wide entity.

Selection of AFA Rate

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR §351.308(c)(1) provide that the Department may rely on information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any information placed on the record. The Department's practice is to select an AFA rate that is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner" and that ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."⁶ Specifically, the Department's practice in reviews, in selecting a rate as total AFA, is to use the highest rate on the record of the proceeding which, to the extent practicable, can be corroborated (assuming the rate is based on secondary

⁵ See *Nippon Steel Corporation v. United States*, 337 F.3d 1373, 1383 (Fed. Cir. 2003), where the Court of Appeals for the Federal Circuit (CAFC) provided an explanation of the "failure to act to the best of its ability" standard noting that the Department need not show intentional conduct existed on the part of the respondent, but merely that a "failure to cooperate to the best of a respondent's ability" existed (*i.e.*, information was not provided "under circumstances in which it is reasonable to conclude that less than full cooperation has been shown").

⁶ See *Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8911 (February 23, 1998); see also *Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review; Final Results of the Eleventh New Shipper Review*, 70 FR 69937, 69939 (November 18, 2005), and the Statement of Administrative Action accompanying the Uruguay Round Agreement Act, H.R. Rep. No. 316, 103d Cong., 2d Sess. 870 (SAA).

information).⁷ The Court of International Trade (CIT) and the CAFC have affirmed decisions to select the highest margin from any prior segment of the proceeding as the AFA rate on numerous occasions.⁸ In choosing the appropriate balance between providing a respondent with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent's prior commercial activity, selecting the highest prior margin reflects "a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less."⁹ Therefore, as AFA, the Department has assigned the PRC-wide entity a dumping margin of \$4.71 per kilogram, the highest calculated per-unit rate on the record of any segment of this proceeding.

Corroboration of Secondary Information Used as AFA

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the

⁷ See Glycine from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 74 FR 15930, 15934 (April 8, 2009), unchanged in Glycine From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 41121 (August 14, 2009); see also Fujian Lianfu Forestry Co., Ltd. v. United States, 638 F. Supp. 2d 1325, 1336 (CIT August 10, 2009) ("Commerce may, of course, begin its total AFA selection process by defaulting to the highest rate in any segment of the proceeding, but that selection must then be corroborated, to the extent practicable.").

⁸ See, e.g., KYD, Inc. v. United States, 607 F.3d 760, 766-767 (CAFC 2010) (KYD); NSK Ltd. v. United States, 346 F. Supp. 2d 1312, 1335 (CIT 2004) (affirming a 73.55 percent total AFA rate, the highest available dumping margin calculated for a different respondent in the investigation); Kompass Food Trading International v. United States, 24 CIT 678, 683-84 (2000) (affirming a 51.16 percent total AFA rate, the highest available dumping margin for a different, fully cooperative respondent); and Shanghai Taoen International Trading Co., Ltd. v. United States, 360 F. Supp. 2d 1339, 1348 (CIT 2005) (affirming a 223.01 percent total AFA rate, the highest available dumping margin for a different respondent in a previous administrative review).

⁹ See KYD, 607 F.3d at 766, citing Rhone Poulenc, Inc. v. United States, 899 F.2d 1185, 1190 (CAFC 1990).

subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.¹⁰ To corroborate means that the Department will satisfy itself that the secondary information to be used has probative value.¹¹ To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used.¹² Independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.¹³

The Department has corroborated the \$4.71 per-unit rate, the highest rate on the record of any segment of this proceeding applied to the PRC-wide entity. The Department notes that this per-unit rate was calculated in Garlic 13¹⁴ using the 376.67 percent ad valorem rate contained in the underlying petition¹⁵ and applied in the final results of every subsequent review as the PRC-wide entity rate. Specifically, to assess the probative value of the total AFA rate selected for the PRC-wide entity in an earlier review, the Department compared this 376.67 percent rate to transaction-specific margins of other respondents. This ad valorem rate from the petition was

¹⁰ See SAA.

¹¹ See id.

¹² See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan: Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 61 FR 57391, 57392 (November 6, 1996), unchanged in Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan: Final Results of Antidumping Duty Administrative Reviews and Termination in Part, 62 FR 11825 (March 13, 1997).

¹³ See Notice of Preliminary Determination of Sales at Less Than Fair Value: High and Ultra-High Voltage Ceramic Station Post Insulators from Japan, 68 FR 35627 (June 16, 2003), unchanged in Notice of Final Determination of Sales at Less Than Fair Value: High and Ultra-High Voltage Ceramic Station Post Insulators from Japan, 68 FR 62560 (November 5, 2003); and Notice of Final Determination of Sales at Less Than Fair Value: Live Swine From Canada, 70 FR 12181, 12183-84 (March 11, 2005).

¹⁴ See Fresh Garlic From the People's Republic of China: Final Results and Partial Rescission of the 13th Antidumping Duty Administrative Review and New Shipper Reviews, 74 FR 29174 (June 19, 2009) (Garlic 13) and accompanying Issues and Decision Memorandum.

¹⁵ We converted the 376.67 percent rate to the \$4.71 per-unit rate by multiplying it by the CBP-derived average unit value for subject merchandise entries during the Garlic 13 POR (excluding the entries from our mandatory and separate rate respondents).

corroborated in previously completed administrative review in which the Department found that the 376.67 percent rate for the PRC-wide entity was in the “range of the highest margins calculated on the record of these reviews.”¹⁶

Similar to the reasons the CIT found the PRC-wide entity rate corroborated in other cases¹⁷ here the Department finds the PRC-wide entity rate to be corroborated. The Department finds this rate to be reliable and relevant, because it (1) constitutes the highest rate from any segment of the proceeding, (2) was applied as the PRC-wide entity rate in the immediately preceding review and has been applied as the PRC-wide entity rate in over a dozen completed reviews, and (3) was corroborated in a prior review using transaction specific margins of the respondents in that review. A more fulsome examination of the Department’s corroboration of the PRC-wide entity rate can be found in the Decision Memorandum at Comment 1: Selection and Corroboration of the PRC-wide rate as to the PRC-wide entity.

Final Results of Review

As a result of our review, we determine that the following margin exists for the PRC-wide entity during the period November 1, 2009, through October 31, 2010.¹⁸

Manufacturer/Exporter	Weighted-Average Margin (dollars per kilogram)
PRC-wide entity (<u>see</u> Appendix I)	\$4.71

¹⁶ See Fresh Garlic from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review and Preliminary Results of New Shipper Reviews, 70 FR 69942 (November 18, 2005), unchanged in Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Final Results of New Shipper Reviews, 71 FR 26329 (May 4, 2006).

¹⁷ See, e.g., Watanabe Group v. United States, Court No. 09-00520 Slip Op. 10-139 (CIT December 22, 2010) and Peer Bearing Company - Changshan v. United States, 587 F. Supp. 2d 1319 (CIT December 8, 2008).

¹⁸ As discussed in the First Partial Preliminary Results, the Department selected four mandatory respondents. In the First Partial Preliminary Results, the Department found Longtai and Hongqiao to be part of the PRC-wide entity.

Assessment and Cash Deposit Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR §351.212(b), the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with these partial final results of review. The Department will direct CBP to assess a \$4.71 per-unit (i.e., per kilogram) assessment rate amount on each entry of the subject merchandise, entered, or withdrawn for entry, during the POR, by companies subject to these partial final results. The Department intends to issue appropriate assessment instructions for such companies directly to CBP 15 days after the publication of this notice in the Federal Register.

The following cash deposit requirements will be effective upon publication of these final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide entity rate of \$4.71 per kilogram; and (2) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR §351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this

requirement could result in the Department's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

This notice also serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR §351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this notice of these final results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

February 17, 2012 _____
Date

Appendix I

1. Linshu Dading Private Agricultural Products Co., Ltd.
2. Linyi City Kangfa Foodstuff Drinkable Co., Ltd.
3. Shandong Chenhe Int'l Trading Co., Ltd.
4. Shenzhen Greening Trading Co., Ltd.
5. Sunny Import & Export Limited
6. Shandong Longtai Fruits and Vegetables Co., Ltd.
7. Weifang Hongqiao International Logistic Co., Ltd.

Appendix II

1. Jining Yifa Garlic Produce Co., Ltd.
2. Jining Yongjia Trade Co., Ltd.
3. Jinxiang Chengda Import & Export Co., Ltd.
4. Jinxiang Hejia Co., Ltd.
5. Jinxiang Yuanxin Import & Export Co., Ltd.
6. Qingdao Sea-Line International Trading Co., Ltd.
7. Qingdao Tiantaixing Foods Co., Ltd.
8. Shandong Wonderland Organic Food Co., Ltd.
9. Shanghai LJ International Trading Co., Ltd.
10. Shenzhen Bainong Co., Ltd.
11. Weifang Chenglong Import & Export Co., Ltd.
12. XuZhou Simple Garlic Industry Co., Ltd.
13. Zhengzhou Huachao Industrial Co., Ltd.
14. Zhengzhou Yuanli Trading Co., Ltd.

Appendix III

Comment 1: Selection and Corroboration of the PRC-wide entity rate as to the PRC-entity

Comment 2: Respondent Selection Process in Reviews

[FR Doc. 2012-4486 Filed 02/24/2012 at 8:45 am; Publication Date: 02/27/2012]